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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6254 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMARJYOTI VIDYA VIHAR PRIMARY SCHOOL

Versus

PRAVINABEN I PATEL

Appearance:

MR HRIDAY BUCH for MR ND NANAVATI for Petitioner

MR MAYUR RANA for MR RK MISHRA for Respondent No. 1

MR PREMAL JOSHI, AGP for Respondent Nos. 2 & 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 24/11/2000

ORAL JUDGEMENT

The petitioner challenges the order of the Primary Education Tribunal, Gujarat, made on 4th July,

1991, in Application No. 93/88, by which the Tribunal set aside the order dated 28.2.1989, passed by the management of the school, terminating the services of the respondent No.1 and directing her to be reinstated and pay her wages from the date of her application.

2. There was a dispute between the petitioner and the respondent No.1 and according to the petitioner, she was not a teacher. However, without prejudice to that stand taken up by the management, the management had given a show cause notice dated 7.9.1988 as per Annexure "D" to the petition, to the respondent No.1, stating that she was a surplus teacher as per the norms governing the strength of teachers in such schools and that her services were therefore, liable to be terminated. She responded to that show cause notice on 15.9.1988 by her reply at Annexure "E" to the petition. The management sent a counter reply dated 12.10.1988 and thereafter, made a resolution on 22.1.1989 for putting an end to her service. For this purpose, an application was forwarded by the management on 21.4.1989 for the approval of the concerned authority, a copy of which is at Annexure "F" to the petition. In paragraph 3 of that application, the particulars of the show cause notice as well as the reply of the respondent No.1 and the procedure undertaken were mentioned and approval was sought from the Administrative Officer as contemplated by the provisions of Section 40B)1)(a)(ii) of the Bombay Primary Education Act, 1947. The approval came to be granted by the Administrative Officer on 24.2.1989 as per Annexure "G" to the petition and she came to be relieved by an order dated 28.2.1989 at Annexure "H" to the petition, passed pursuant to such approval.

The Tribunal before whom the respondent No.1 challenged the order passed against her while noticing that a show cause notice was issued on 28.2.1989 to the respondent No.1 by the management, interfered with the order on the ground that before the matter was heard by the Administrative Officer, the management had not given adequate opportunity of being heard to the respondent No.1 under the provisions of Section 40B(1)(a)(i) of the Bombay Primary Education Act. Under the said provision, the management is required to give a show cause notice against the proposed action to be taken against the teacher. It is clear that the Tribunal did not notice the contents of the show cause notice as well as the reply dated 15.9.1988 given by the respondent No.1, the counter reply dated 12.10.1988 and the resolution made by the management, before coming to a finding that the respondent No.1 was not given an opportunity to defend

herself as contemplated by the aforesaid provision. The Tribunal has thus, come to a finding without considering the relevant material, which was on record and had a bearing on the question as to whether the respondent No.1 was given an opportunity to defend herself or not under Section 40(B)(1)(a)(i) of the said Act. The impugned order therefore cannot be sustained and is hereby set aside and the matter is remanded to the Tribunal for considering it afresh in light of the material, which was on record on the aspect whether an opportunity of showing cause against the proposed action as contemplated by Section 40B(1)(a)(i) of the said Act was given to the respondent No.1 and to take a fresh decision in the matter in accordance with law, after hearing the parties. Rule is made absolute accordingly with no order as to costs. Any payments that may have been made during the pendency of this petition to the respondent No.1 will be subject to the outcome of the proceedings that may hereafter take place pursuant to the order.

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